



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 2

[Docket No. USCG-2007-27668]

RIN 1625-AB35

Approval of Classification Societies

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: Federal law requires that classification societies conducting certain work in the United States be approved by the Coast Guard. In this rule, we finalize application procedures and performance standards that classification societies must meet in order to obtain approval by the Coast Guard. Through this final rule, we seek to improve marine safety and environmental protection by assuring the consistency and quality of work conducted by classification societies that review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States.

DATES: This final rule is effective [INSERT DATE **30** DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The incorporation by reference of certain publications

listed in the rule is approved by the Director of the Federal Register on [INSERT DATE **30** DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.] .

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2007-27668 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2007-27668 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Alfred Giordano, Office of Design and Engineering Standards (CG-ENG-1), Coast Guard; telephone 202-372-1362, e-mail [alfred.j.giordano@uscg.mil](mailto:alfred.j.giordano@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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#### I. Abbreviations

ABS	American Bureau of Shipping
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
IACS	International Association of Classification Societies
ICLL	International Convention on Load Lines, 1966
IMO	International Maritime Organization
ISO	International Organization for Standardization
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto
MOU	Memorandum of Understanding
NARA	National Archives and Records Administration
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of Proposed Rulemaking
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget

RO	Recognized Organization
SBA	Small Business Administration
SOLAS	International Convention for the Safety of Life at Sea, 1974, as amended
U.S.C.	United States Code

## II. Regulatory History

We published a notice of policy and a request for comments that outlined the procedures by which classification societies could apply for approval with the Coast Guard. See 69 FR 63548 (November 2, 2004). This notice of policy was based on the August 9, 2004 enactment of Section 413 of the Coast Guard and Maritime Transportation Act of 2004 ("the 2004 Act") (P.L. 108-293). The 2004 Act amended 46 U.S.C. 3316 by adding paragraph (c), which prohibits certain activities on a vessel in the United States by classification societies that have not been approved by the Coast Guard. The 2004 Act mandated that, after December 31, 2004, a classification society, including an employee or agent of that society, may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless the classification society is either approved by the Coast Guard or is a full member of the International Association of Classification Societies (IACS).

After publication of the notice of policy, we received two questions from the public that were addressed in a

Notice of Proposed Rulemaking (NPRM) published in the Federal Register on April 23, 2010. The NPRM, entitled "Approval of Classification Societies" (75 FR 21212), outlined the procedures and criteria we would use to evaluate classification societies. The comment period closed on July 22, 2010, and we received no comments on the proposed rule. No public meeting was requested and none was held.

On October 15, 2010, the enactment of section 622 of the Coast Guard Authorization Act of 2010 (the "2010 Act") (Pub. L. 111-281) amended 46 U.S.C. 3316(c). The 2010 Act changed the provision's applicability to require all classification societies, including IACS members, to be approved by the Coast Guard prior to conducting any work on a vessel in the United States. Because of the 2010 Act's applicability changes, we reopened the comment period to allow for any additional or updated comments from the public on our plan to remove the proposed rule's exemption for IACS members, and apply the proposed rule to all classification societies seeking Coast Guard approval, including IACS members. See 76 FR 47531 (August 5, 2011). The comment period closed on September 6, 2011, and 4 commenters with 11 comments responded to the revised

proposal. No public meeting was requested and none was held.

### III. Basis and Purpose

This final rule codifies into Title 46 of the Code of Federal Regulations (CFR) the procedures and criteria to evaluate classification societies in accordance with 46 U.S.C. 3316(c) in order to have a specific, consistent, and enforceable basis for approval determinations.

### IV. Background

To incorporate the requirements of 46 U.S.C. 3316(c) into regulations, we deem the International Maritime Organization (IMO) Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration," to provide a sound and internationally recognized standard on which to base our classification society review and approval program.

The IMO acknowledges that a classification society often acts as a Recognized Organization (RO) under authority delegated by a flag state administration when it performs technical and survey work on behalf of that administration. Recognizing this relationship, IMO Resolution A.739(18) adopted guidelines for minimum competency standards for ROs that act on behalf of flag state administrations to conduct vessel examinations, issue

international certificates, perform surveys and certifications, and determine vessel tonnage in accordance with applicable international requirements. In addition, the IMO guidelines are consistent with our minimum standards for a classification society to qualify as a Coast Guard-recognized organization in accordance with 46 CFR part 8, "Vessel Inspection Alternatives."

To perform work on behalf of a flag state administration that uses the IMO guidelines, an RO must sufficiently demonstrate that its business practices meet or exceed the performance standards described in IMO Resolution A.739(18). For example, the RO must show that it—

- Publishes and systematically maintains rules for the design, construction, and certification of vessels;
- Is professionally staffed with strategically placed resources for geographic coverage;
- Maintains a high level of professional ethics;
- Is competent;
- Provides timely and quality services; and
- Maintains an internal quality system no less effective than the International Organization for Standardization (ISO) 9000 series certification.

(For information on these standards or on ISO, see [www.iso.ch](http://www.iso.ch).)

When an RO demonstrates these competencies to the satisfaction of the flag state administration, its authorization is documented by that administration in a formal written agreement under the recommendations of IMO Resolution A.739(18).

Similarly, all classification societies must meet the following requirements for approval under the provisions of 46 U.S.C. 3316(c):

- Vessels surveyed by the classification society must have an adequate safety record.
- The classification society must have an adequate program to—
  - o Develop and implement safety standards for the vessels it surveys;
  - o Make its safety records available in an electronic format;
  - o Make the safety records of a vessel survey available to other classification societies; and
  - o Request safety records from other classification societies that previously surveyed a vessel for the purpose of a specific vessel survey.

To better assess classification societies, we evaluate



how these societies implement safety standards for vessels by examining worldwide port state control statistics for each society and the vessels it surveys. These data normally appear in annual reports published by the world's regional port state control organizations. Some of these annual reports are not available online. These organizations include, but are not limited to, the following organizations created under regional memoranda of understanding (MOU):

- Paris Memorandum of Understanding on Port State Control (Paris MOU: [www.parismou.org](http://www.parismou.org)).
- Memorandum of Understanding on Port State Control in the Asian-Pacific Region (Tokyo MOU: [www.tokyo-mou.org](http://www.tokyo-mou.org)).
- Mediterranean Memorandum of Understanding on Port State Control (Med MOU: [www.medmou.org](http://www.medmou.org)).
- Black Sea Memorandum of Understanding on Port State Control (Black Sea MOU: [www.bsmou.org](http://www.bsmou.org)).
- The Latin American Agreement on Port State Control of Vessels (Vina del Mar MOU: [www.acuerdolatino.int.ar](http://www.acuerdolatino.int.ar)).
- West and Central Africa Memorandum of Understanding on Port State Control (Abuja MOU: [www.abujamou.org](http://www.abujamou.org)).

- Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (Riyadh MOU: [www.riyadhmou.org](http://www.riyadhmou.org)).
- Indian Ocean Memorandum on Port State Control (Indian Ocean MOU: [www.iomou.org](http://www.iomou.org)).
- Caribbean Memorandum of Understanding on Port State Control (Caribbean MOU: [www.caribbeanmou.org](http://www.caribbeanmou.org)).

These MOU are regional agreements among countries to share port state control inspection results with the aim of eliminating the operation of substandard ships. Typically, MOU are managed by secretariats that maintain databases of inspection activities and results and often compile the data into annual reports. The annual reports normally compiled by the MOU secretariats are available to the public and identify, among other things—

- Vessel names and particulars;
- Inspection dates and locations;
- Classification societies;
- Deficiencies noted;
- Detentions imposed;
- Detained vessels; and
- Banned and targeted vessels.

For information on U.S. port state control results and

the regional MOUs, see [www.uscg.mil/hq/g-m/pscweb/index.htm](http://www.uscg.mil/hq/g-m/pscweb/index.htm). A copy of the most recent annual report from the United States and the regional organizations can be found in this docket.

We can evaluate the performance of a particular classification society by scrutinizing the port state control history of the vessels it surveys. For example, an annual report from a major MOU secretariat typically includes 3 years of data showing the performance of all ships listed by administration and RO. The RO is usually a classification society.

These shared port state control data are indispensable in evaluating the safety performance of flag state administrations and classification societies. Not only can we check performance from the data in the annual reports, we can also track trends from year to year.

#### V. Discussion of Comments and Changes

We received no comments from the NPRM published on April 23, 2010. Since the publication of the NPRM, the 2010 Act required all classification societies, without exemption, to seek Coast Guard approval prior to working on a vessel located in the United States. Accordingly, we reopened the comment period (76 FR 47531).

A. Comments Received After Reopening the Comment Period.

We received 11 comments from 4 commenters in response to the NPRM after the reopening of the comment period.

Two commenters requested that a classification society that has qualified as a Coast Guard-recognized organization under 46 CFR part 8 to conduct work on behalf of the Coast Guard on U.S. flagged vessels be exempted from the proposed rule. We have determined that we lack the authority to grant wholesale exemptions to the requirement in 46 U.S.C. 3316(c)(1) that every classification society "appl[y] for approval under this subsection," and that section 3316(c)(2) requires us to "review[] and approve[] that society" under that subsection.

However, we will deem compliance with the application procedures in 46 CFR part 8 to satisfy the new application procedures under new 46 CFR subpart 2.45 promulgated by this rule. Consistent with the statute, we are requiring any Coast Guard-RO seeking approval as a classification society under this rule to explicitly request that the Coast Guard evaluate their 46 CFR part 8 application materials under this rule as well. Upon receiving such notice, we will treat the part 8 application materials as an application under this subpart. If we need additional

information to perform our review, we will take the appropriate action to notify the classification society and give them an opportunity to submit the information to us.

One commenter requested that his or her organization be automatically approved under 46 U.S.C. 3316(c)(1) and under the proposed rule. The commenter argued that such approval was justified because the organization is identified in 46 U.S.C. 3316(a) by name as an agent on behalf of the U.S. Government in classifying vessels owned by the Government. Also, the organization is recognized by the Coast Guard and authorized as a recognized organization of the Coast Guard pursuant to the requirements of Coast Guard regulations in 46 CFR part 8 pursuant to 46 U.S.C. 3316(b)(1).

We agree with the commenter that the organization is identified as the sole classification society for U.S. Government-owned vessels. However, based on the reasoning previously stated, we cannot automatically approve any organization as a classification society. Section 3316(c)(1) of 46 U.S.C. requires that every classification society make application to the Coast Guard for approval and that the Coast Guard assess the conduct of the classification society under 46 U.S.C. 3316(c)(2). An automatic approval would violate both the application

requirement and the assessment requirement. As stated above, however, we will deem compliance with the application procedures in 46 CFR part 8 to satisfy the new application procedures under new 46 CFR subpart 2.45, provided each applicant submits indication that they all wish to be assessed under the new regulations in 46 CFR subpart 2.45 to become an approved classification society.

Additionally, the same commenter asked that we clarify in the final rule whether the detention rate is based on all vessel detentions or specifically RO-related detentions. We agree that clarification is necessary. An RO detention occurs when a vessel is detained due to a deficiency which is the result of an activity by an RO. Therefore, we will amend the regulatory text to specify that the detention rate is based specifically on RO-related detentions.

One commenter felt that the final rule does not list clear or specific criteria for annually reevaluating the records of classification societies to ensure they continue to meet the conditions for approval. The same commenter also stated that if the re-evaluation criteria include data from global port state control regimes, then some previously approved classification societies would have poorer records than some classification societies that are

not approved. The same commenter expressed the hope that the requirement in § 2.45-15 would not amount to annual auditing of classification societies performance processes.

We agree that the proposed rule did not explicitly list the criteria for annually reevaluating the performance of a classification society. However, as stated in the NPRM (see 75 FR page 21215), we will "annually reevaluate the records of approved classification societies to ensure they continue to meet the conditions for approval." It was and remains our intention to use the approval requirements listed in § 2.45-15 to annually reevaluate the performance of approved classification societies. We also agree that it is possible for us to find during a re-evaluation that an approved classification society has a poor performance record based on data collected from global port state control regimes. If we determine that a previously approved classification society no longer meets the requirements in § 2.45-15, then we will take corrective action per § 2.45-20.

While we appreciate the commenter's concern, annual review of a classification society's performance is necessary to ensure that the classification society is in compliance with the requirements set forth in the regulations.

One commenter had six comments, discussed as follows.

The commenter asked that we clarify the scope of "repair" in light of the fact that repairs to the hull, equipment, and machinery can be made at any time as a result of an accident or survey work. Repair includes, but is not limited to, any work done to the hull, equipment, or machinery that restores the item to its original design or intended operating condition.

The commenter requested that we clarify whether a classification society would be allowed to conduct surveys "whether they be periodical (annual, intermediate and renewal) or occasional and to issue certificates even if they are not approved by the Coast Guard." A classification society that is not approved by the Coast Guard would be permitted to conduct surveys and issue certificates to a vessel if that vessel is not undergoing or has not completed any construction, repair, or alteration in the United States.

Next, the commenter took issue with the requirement proposed in § 2.45-15(a)(6)(i) that a classification society must use a system to make its safety records available to the Coast Guard. The commenter believes the provision does not define or sufficiently clarify the scope of information to be provided as part of a vessel's safety



records, thereby risking the disclosure of commercially sensitive and confidential information of ship owners to parties who should not be privy to that information.

We appreciate the commenter's concern; however, to determine whether the vessels surveyed by a classification society have an adequate safety record, the classification society would be required to provide all records we formally request. We would request only those records that are necessary to adequately determine the performance of a classification society with respect to safety and, except as required by law, would not disclose those records to any parties with competing interests.

The same commenter stated that § 2.45-15(a)(6)(ii), which requires a classification society to have in place a system to provide its safety records to other classification societies when requested, is redundant because of existing procedures for sharing data. We appreciate the commenter's concern; however, 46 U.S.C. 3316(c)(2)(B)(iii) mandates that the Coast Guard require classification societies to make their safety records available to all relevant parties.

Next, the commenter was concerned with the proposed requirement in § 2.45-15(5) that requires that a country for which a classification society is an RO must be a

signatory to the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS); the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL); and the International Convention on Load Lines, 1966 (ICLL). The commenter felt that this requirement may cause an adverse situation because a flag state would be compelled to ratify the aforementioned international conventions simply to have its RO meet the Coast Guard's requirement. We disagree that this requirement would create an adverse situation. By ratifying the SOLAS, MARPOL, and ICLL conventions, a flag state would join the majority of flag states that have ratified these conventions and help ensure that their vessels improve their safety record.

Finally, the commenter requested we clarify whether all countries for which a classification society is an RO must be a signatory to each of the SOLAS, MARPOL, and ICLL conventions. The commenter was concerned because classification societies usually are ROs of many countries, including ones that have not ratified some of the international conventions. In response, we point out that the regulatory text in § 2.45-15(a)(4) clearly states that the classification society must have received approval to

act as an RO by at least one country that is a signatory to the SOLAS, MARPOL, and ICLL conventions. Therefore, at least one country would have to be a signatory to these conventions.

B. Changes Made to Address the 2010 Act.

In this final rule, we made changes to several sections from the proposed rule based on changes in applicability as required by the enactment of the 2010 Act, which amended 46 U.S.C. 3316(c), and to improve clarity and ensure accuracy of the information presented in this final rule.

We amended §§ 2.45-10(a), 2.45-15(a), and 2.45-30 by deleting any references to exemptions for IACS members in accordance with the 2010 Act, which requires all classification societies, without exemption, to seek Coast Guard approval prior to working on a vessel located in the United States.

We amended § 2.45-25 by adding new paragraph (c), which states that an application submitted to become a Coast Guard-RO under 46 CFR part 8, subpart B satisfies the application requirements to become an approved classification society as long as the RO's status has not been revoked, it submits a request to become an approved classification society, and it certifies that the

application information submitted under 46 CFR part 8, subpart B remains valid. This change, in response to commenters seeking an exemption or automatic approval based on RO status, avoids requiring organizations to resubmit information they have previously provided as part of an application under 46 CFR part 8, subpart B. This change permits such organizations to submit a minimal application, as long as the Coast Guard has the necessary information evidenced by continuing RO status and the certification that the previously submitted information is still valid.

We amended § 2.45-15(a)(1) to clarify we will review the detention records of a classification society for vessels it surveys during the past 3 years.

We also amended § 2.45-15(a)(5) to clarify that the country for which the classification society is an RO refers to the same country referenced in § 2.45-15(a)(4).

We amended § 2.45-15(a)(5)(ii) by rewording the language of the proposed text to clarify that the one country for which the class society meets the requirement of § 2.45-15(a)(4) cannot be identified as a flag state targeted for additional port state control action by the Coast Guard.

We also made minor changes to the regulatory text. First, the final rule deletes the authority citation for 46

CFR 2.45, as this section was removed from the CFR on September 30, 1997. See 62 FR 51195. Second, the final rule makes minor formatting changes to improve clarity, such as adding paragraph designations within some sections. Finally, throughout the rule we changed the Coast Guard office designator "CG-521" to CG-ENG" to reflect a recent Coast Guard organizational change.

#### VI. Incorporation by Reference

The Director of the Federal Register has approved the material in § 2.45-5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

#### VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed

it under that Order.

As previously discussed in section "V. Discussion of Comments and Changes," the applicability provision was changed to reflect an amendment to the legal authority made by the Coast Guard Reauthorization Act of 2010. In summary, the total cost for this rule will involve only one-time costs for applications for the initial approval, and we estimate the total will be \$5,429. Below, we present the basis for our estimate of the costs for this final rule that accounts for this amendment and the current status of classification societies active in the United States.

We previously approved six classification societies under the policy announced in 2004 based on the 2004 Act. Of the six, these two are IACS members: Indian Register of Shipping and Polish Register of Shipping. The other four that are not IACS members are: Bulgarian Register of Shipping, China Corporation Register of Shipping, Hellenic Register of Shipping, and International Naval Surveys Bureau. In the NPRM, we stated that approved classification societies would not need to take additional actions and would not incur any additional costs. We are not aware of any information, either from the comments or other sources, to alter that assessment. Thus, these six

organizations would not have any cost burden associated with this rulemaking.

We identified the remaining members of IACS as the population affected by the 2010 Act amendments, which changed the applicability of 46 U.S.C. 3316(c) to include IACS members in the application and review procedures. Table 2 lists these classification societies and indicates whether they currently have RO status with the Coast Guard under 46 CFR part 8.

Table 1: IACS Members Without Classification Society Approval

Class Society	Abbreviation	RO?
American Bureau of Shipping	ABS	Yes
Bureau Veritas	BV	Yes
China Classification Society	CCS	No
Croatian Register of Shipping	CRS	No
Det Norske Veritas	DNV	Yes
Germanischer Lloyd	GL	Yes
Korean Register of Shipping	KRS	No
Lloyd's Register of Shipping	LR	Yes
Nippon Kaiji Kyokai	NK	Yes
Registro Italiano Navale	RINA	Yes
Russian Maritime Register of Shipping	RS	No

As the table shows, there are seven class societies that are not approved but currently have RO status (ABS, BV, DNV, GL, LR, NK, and RINA). We assume that they will

take advantage of §2.45-25(c) and will submit an application to become approved classification societies.

Coast Guard subject matter experts in the Naval Architecture Division provided estimates of time to process one of these applications submitted in accordance with new § 2.45-25(c). The classification society will require 1 hour for a junior manager to draft the application letter and 0.5 hour for a senior manager to review it. Coast Guard processing will require 2 hours for a senior staff member or junior manager to review the application, verify the data, and draft the approval letter, and 0.25 hour for a senior manager to review it. Table 2 presents the complete calculations of the unit cost for this application, with the same wage rates used in the NPRM, "Approval of Classification Societies" (75 FR 21212).



Table 2: Unit Cost of Application for Classification

Society With RO Status

Sector	Position	Hours	Wage Rate	Position Cost	Sector Cost
Industry	Junior Manager	1.00	\$67	\$67	
	Senior Manager	0.50	\$88	\$44	
Industry Total		1.50			\$111
Government	Junior Officer	2.00	\$67	\$134	
	Senior Officer	0.25	\$88	\$22	
Government Total		2.25			\$156
Total Unit Cost		3.75			\$267

The total cost for these applications is \$1,869 and

Table 3 displays the calculations.

Table 3: Application Costs for Class Societies With RO Status

Sector	Count	Unit Cost	Total Cost
Industry	7	\$111	\$777
Government	7	\$156	\$1,092
Total	7	\$267	\$1,869

We anticipate that the other four classification societies that currently are not ROs (CCS, CRS, KRS, and RS) will also apply to become approved classification

societies. They will need to prepare a complete application per the requirements of §2.45-25(b). In the NPRM, we estimated the total unit cost for one of these applications at \$890 (\$712 for industry and \$178 for government). We received no additional information from either the comments or other sources to cause us to modify this estimate. The total cost for these four applications is \$3,560, and Table 4 presents the calculations.

Table 4: Application Costs for Class Societies Without RO Status

Sector	Count	Unit Cost	Total Cost
Industry	4	\$712	\$2,848
Government	4	\$178	\$712
Total	4	\$890	\$3,560

In the NPRM, we stated that based on the historical record, we anticipate that the approved classification societies will remain in good standing in the foreseeable future. We received no contrary information since then. With that assumption, we anticipate that there will be no costs associated with suspensions or reapprovals. As stated earlier, we also anticipate that only current IACS members will apply for approval.

With these assumptions, the total costs for this rule will involve only one-time costs for applications for the

initial approval, and we estimate the total will be \$5,429. Table 5 summarizes these application costs, as previously described.

Table 5: Total Application Costs

RO Status	Count	Industry Costs	Government Costs	Total Costs
Currently RO	7	\$777	\$1,092	\$1,869
Not RO	4	\$2,848	\$712	\$3,560
Total	11	\$3,625	\$1,804	\$5,429

The benefits of this rule derive from incorporating the amendments from the Coast Guard Authorization Act of 2004 and the Coast Guard Authorization Act of 2010 and incorporating the standards from IMO Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration," to provide a sound and internationally recognized standard on which to base our review and approval program.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For-profit classification societies affected by this rule may be classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330—Navigation Services to Shipping or 488390—Other Support Activities for Water Transportation. According to the Small Business Administration's (SBA) size standards, a U.S. company classified under these NAICS codes with annual revenues of less than \$7 million is considered a small entity.

The only predominant U.S. classification society is the American Bureau of Shipping (ABS), which is a non-profit organization. We do not consider the ABS to be a small entity under the Regulatory Flexibility Act. In addition, the costs that we described in the previous section are so minimal, we do not believe they rise to the level of being a significant economic impact. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520).

This rule comprises application procedures classification societies must meet for approval. As stated in Section VII.A, we expect four new approvals in the first year after the rule becomes effective. In the NPRM, we forecasted that there would be no or very few applications

in the near future. We received no comments or additional information to indicate that there would be 10 or more approvals after the first year. Thus, we expect to receive less than 10 approval requests per year. This figure is less than the threshold of 10 per 12-month period for collection of information reporting purposes under the PRA.

This rule specifies a separate approval process for classification societies that are currently ROs. These ROs will only need to send the Coast Guard a letter requesting that we use previously collected data as the basis for their approval.

As stated in Section VII.A, we expect the seven current ROs to use this method to apply for approval the first year the rule becomes effective. This process does not require any new information and the affected population is less than the threshold of 10 per 12-month period for collection of information reporting purposes under the PRA.

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order

and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not



designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards: IMO Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration." The section that references this standard and the location where this standard is available is listed in 46 CFR 2.45-5.

#### M. Environment

We have analyzed this rule under Department of

Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraphs (34)(b) and (d) of the Instruction. This rule involves regulations concerning internal agency functions and regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 46 CFR Part 2

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 2 as follows:

#### PART 2—VESSEL INSPECTIONS

1. The authority citation for part 2 is revised to read as follows:

Authority: Sec. 622, Pub. L. 111-281; 33 U.S.C. 1903;

43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

2. Add subpart 2.45 to read as follows:

Subpart 2.45—Classification Society Activities

Sec.

2.45-1 Definitions.

2.45-5 Incorporation by reference.

2.45-10 General.

2.45-15 Approval requirements.

2.45-20 Probation, suspension, and revocation.

2.45-25 Application for approval.

2.45-30 Penalties.

Subpart 2.45—Classification Society Activities

§ 2.45-1 Definitions.

The following definitions apply to this subpart:

Administration means the Government of the State whose flag the ship is entitled to fly.

Classification society means an organization that, at a minimum, verifies that a vessel meets requirements embodying the technical rules, regulations, standards, guidelines and associated surveys, and inspections covering

the design, construction, and/or through life compliance of a ship's structure and essential engineering and electrical systems.

Recognized Organization (RO) means an organization authorized to act on behalf of an Administration.

Regional port state control secretariat means an organization established to collect and maintain port state control inspection data in addition to other functions under a regional agreement among countries.

§ 2.45-5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Also, it is available for inspection at the Coast Guard's Office of Design and Engineering Systems (CG-ENG), 2100 Second Street SW.,

Washington, DC 20593-0001, and is available from the sources indicated in this section.

(b) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, U.K. +44 (0)20 7735 7611, <http://www.imo.org/>.

(1) IMO Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, adopted 4 November 1993, incorporation by reference approved for § 2.45-15.

(2) [Reserved]

§ 2.45-10 General.

(a) A classification society (including an employee or agent of that society) must not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless it is approved under the provisions of this subpart.

(b) This subpart applies to a recognized organization that meets the definition of a classification society provided in § 2.45-1 of this subpart.

§ 2.45-15 Approval requirements.

(a) A classification society may be approved for purpose of § 2.45-10 if the following conditions are met:

(1) Vessels surveyed by the classification society must have a worldwide port state control detention rate of

less than 2 percent based on the number of Recognized Organization (RO)-related detentions divided by the number of vessel inspections for at least 40 port state control inspections for the past 3 years;

(2) The classification society must not be identified in the most recent publication of "Port State Control in the United States" as a Priority I and as having more than one RO-related detention for the past 3 years;

(3) The classification society must comply with the minimum standards for an RO recommended in IMO Resolution A.739(18), Appendix 1 (incorporated by reference, see § 2.45-5.);

(4) The classification society must be an RO for at least one country under a formal written agreement that includes all of the elements described in IMO Resolution A.739(18), Appendix 2 (incorporated by reference, see § 2.45-5.);

(5) The referenced country that is cited for satisfaction of the requirement of paragraph (a)(4) of this section for which the classification society is an RO—

(i) Must be signatory to each of the following: the International Safety of Life at Sea Convention (SOLAS), the International Convention on the Prevention of Pollution from Ships (MARPOL 73/78), the International Convention on

Load Lines (ICLL), 1966, and the Protocol of 1988 relating to the ICLL, 1966; and

(ii) Must not be identified as a flag state targeted for additional port state control action by the Coast Guard or any regional port state control secretariat.

(6) The classification society must use a system to--

(i) Make its safety records and those of persons acting on behalf of the classification society available to the Coast Guard in electronic format;

(ii) Provide its safety records and those of persons acting on behalf of the classification society to another classification society that requests those records for the purpose of conducting surveys of vessels; and

(iii) Request the safety records of a vessel to be surveyed from any other classification society that previously surveyed that vessel.

(b) Where sufficient performance records are not available from a regional port state control secretariat, the Coast Guard may consider an equivalent safety performance indicator proposed by the classification society seeking approval.

§ 2.45-20 Probation, suspension, and revocation.

(a) A classification society approved for the purpose of this subpart must maintain the minimum requirements for approval set forth in § 2.45-15.

(b) If an approved classification society fails to maintain compliance with paragraph (a) of this section, the Coast Guard may place the classification society approval on probation, or suspend or revoke the classification society's approval, as appropriate.

(c) Probation. A classification society on probation is approved for the purpose of this subpart. The probation continues until the next review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows that compliance with paragraph (a) of this section is achieved, the probation may end.

(2) If the review shows significant improvement but compliance with paragraph (a) of this section is not achieved, the probation may be extended.

(3) If the review does not show significant improvement, and compliance with paragraph (a) of this section is not achieved, the approval may be suspended.

(d) Suspension. A classification society whose approval is suspended is not approved for the purpose of this subpart. Suspension will continue until the next



review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows compliance with paragraph (a) of this section, the classification society's approval may be restored.

(2) If the review shows significant improvement toward compliance with paragraph (a) of this section, the suspension may be extended.

(3) If the review does not show significant improvement and compliance with paragraph (a) of this section, the classification society's approval may be revoked.

(e) Revocation. A classification society whose approval is revoked is not approved for the purpose of this subpart. The classification society may reapply for approval when the requirements of § 2.45-15 are met.

(f) The Coast Guard's Office of Design and Engineering Standards (CG-ENG) administers probations, suspensions, and revocations and makes all related notifications to affected classification societies.

§ 2.45-25 Application for approval.

(a) An application for approval must be made in writing and in the English language to U.S. Coast Guard, Commandant (CG-ENG), Office of Design and Engineering

Standards, 2100 Second Street, SW. Stop 7126, Washington DC 20593-7126.

(b) The application must--

(1) Indicate the type of work the classification society intends to perform on vessels in the United States;

(2) Include documentation demonstrating that the classification society complies with § 2.45-15;

(3) Contain a list of the vessels surveyed by the classification society over the previous 3 calendar years. The list must include vessel names, flags, and IMO numbers, as well as initial vessel inspections and detentions; and

(4) Provide a summary of the safety records of vessels the classification society surveys for each of the previous 3 calendar years, including initial vessel inspections and detentions for all data contained in regional port state control Memoranda of Understanding (MOU) and other port state control data sources, including the U.S. Coast Guard.

(c) An application submitted in accordance with 46 CFR part 8, subpart B satisfies the application requirements of paragraph (a) of this section, provided the applicant:

(1) Has been notified in writing by the Commandant that it met the criteria to be a recognized classification

society, and its recognized status has not been revoked,  
under 46 CFR part 8, subpart B;

(2) Submits in writing and in the English language to  
the address in paragraph (a) of this section a statement  
that the applicant is applying for approval under this  
subpart; and

(3) Certifies in the submission under paragraph (c) (2)  
of this section that the information in the application  
submitted under 46 CFR part 8, subpart B remains valid.

§ 2.45-30 Penalties.

The owner, charterer, managing operator, agent,  
master, or individual in charge of a vessel that employs a  
classification society to review, examine, survey, or  
certify the construction, repair, or alteration of a vessel  
in the United States is subject to civil penalties in  
accordance with Title 46 U.S.C. 3318 if the classification  
society is not approved by the Coast Guard under this  
subpart.

Dated: July 26, 2012

J. G. Lantz  
Director of Commercial Regulations and  
Standards, U. S. Coast Guard

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